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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

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Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding
Narrowband PCS)

PP Docket No. 93-253

and

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Amendment of the Commission's
Rules to Establish New Narrowband
Personal Communications Services)

GEN Docket No. 90-314
ET Docket No. 92-100

COMMENTS

David J. Lieto ("Commenter"), by his attorneys, hereby files comments with respect to the Third Memorandum and Order and Further Notice of Proposed Rulemaking released by the Commission on August 17, 1994 in the above referenced dockets. The Further Notice of Proposed Rulemaking ("FNPRM") contains a proposal for redesignating the two Basic Trading Area ("BTA") Narrowband Personal Communications Services ("NPCS" or "Narrowband") licenses as regional or nationwide licenses. FNPRM, ¶122, pp.54-55. Because this proposal would further reduce the opportunity for the Commenter and other small businesses to participate in the telecommunications industry, the Commission should not redesignate the two Narrowband BTA licenses as regional or nationwide licenses.

When Congress passed the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), the Federal Communications Commission ("Commission") entered the era of competitive bidding or auctions. A prospective licensee now has to pay

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the market's price for the right to use certain radio spectrum. The legislatively mandated auctions were largely intended to replace the "private" auctions that occurred after the Commission lotteried valuable spectrum. Looking at the privately held auctions for cellular licenses, one commenter has asserted that ten large companies, over half of which are Regional Bell Operating Companies, now control almost 86% of the cellular industry. FNPRM, ¶71, p. 33. Clearly, letting the market dictate who receives licenses results in the aggregation of spectrum under the control of a small number of financially powerful companies.

When Congress passed the Budget Act providing for competitive bidding, it recognized the likelihood that a small number of large companies would dominate the Commission's public auction process. To prevent this from happening, Congress instructed the Commission to promulgate competitive bidding rules to ensure that certain designated entities have the opportunity to be Commission licensees. See 47 U.S.C. § 309(j)(4)(D). Furthermore, Congress required the Commission to issue rules that, ". . . prescribe area designations . . . that promote . . . economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women" 47 U.S.C. § 309(j)(4)(C).

If it were to redesignate the Narrowband BTA licenses, the Commission would be eliminating the one area designation

in its rules that gives small business and, by virtue of the fact that many women and minority owned businesses are small businesses, women and minority owned businesses the opportunity to own Narrowband licenses. The Small Business Administration's Chief Counsel for Advocacy has argued that a company with \$40 million in revenue, the Commission's current definition of "small business", would have sufficient resources to, ". . . meet demands in almost all small markets and some medium-size markets" FNPRM, ¶45, p.22, citing, Comments of SBA Office of Advocacy, p.10. One must assume that small or medium size markets refers to BTA's. The next level of area designation, Major Trading Areas ("MTA"), start at population levels of 1,124,174 people. Thirty-nine of the Forty-seven MTA's listed in the Rand McNally atlas have 2,000,000 or more people. The MTA area designation embodies large markets that are beyond the financial resources of small businesses. By redesignating the BTA narrowband licenses, the only choice left for small business will be the large market MTA licenses, which as shown, is really no choice.

As its primary rationale for redesignating the BTA licenses, the Commission notes that approximately one-half of the bidders in the nationwide auction would have qualified for an entrepreneurs' block license. However, this statement gives no indication as to how many small businesses (revenues under \$40 million) or businesses owned by women or minorities are included in this number. The Commission's implicit

message in proposing to redesignate the BTA licenses based on this rationale is that it wants to give those "entrepreneurs" who were frustrated in the nationwide auction the opportunity to bid on a license that covers a significant portion of the country. If the Commission creates two new regional licenses set aside for entrepreneurs, the only entities that realistically can be expected to benefit are those companies with approximately \$125 million in revenues who could not compete with the PageNets, McCaws and AirTouches in the nationwide and non set-aside regional auctions. This Commenter acknowledges that the same frustrated entrepreneur could outbid the small businesses and accumulate the necessary BTA licenses to create a regional network. It could also happen that, in combination with preferences granted to designated entities, a small business values a particular BTA more than a larger company, and in that particular market outbids the larger company. However, the only way for this scenario to have any possibility of occurring is for the Commission to retain the BTA area designation. Furthermore, to ensure that the Commission awards a BTA license to the company that values that particular BTA the most, the Commission should not permit combinatorial bidding on BTA licenses.

Although the Commission should not create area designations that are destined for failure because they are too small, it should recognize that paging operations still

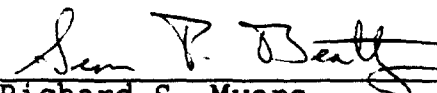
exist that make a viable business of providing competitive services to a local population. Nationwide and regional networks benefit many Americans. There are many Americans, however, who do not need or want paging services outside the area in which they work and live. By retaining the BTA area designation, the Commission will ensure that small businesses, as Congress intended, at least have the opportunity to provide advanced two-way paging and data transmission services to those people who do not require service across the country.

For these reasons, the Commission should retain the BTA area designation and set both BTA licenses aside for bidding by entrepreneurs as defined in the Commission's rules.

Respectfully submitted,

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